In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1394

JACK BILLINGSLEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The issues presented in this case are whether the trial judge committed error in refusing to give an instruction couched in the language requested by petitioner, and whether the evidence is sufficient to support petitioner's conviction for violating the Hobbs Act.

After a jury trial in the United States District Court for the Eastern District of Michigan, petitioner was convicted of violating the Hobbs Act, 18 U.S.C. 1951, by forcing the hiring of unwanted and superfluous employees on threat of a work stoppage. He was sentenced to imprisonment for three years, with all but sixty days suspended, and probation for two years. The court of appeals affirmed (Pet. App. B).

1. The government's evidence showed that in May 1965, the W. H. Mechem Company began construction of a

warehouse on a site in Flint, Michigan. The one-story warehouse was being built directly under six high tension lines. On Sunday, June 27, construction had progressed to the point where laborers would have to work on the portion of the warehouse directly under the electrical lines. Anticipating that situation, the construction firm's general manager, Derward Mechem, had arranged for the temporary de-energizing of the three lines closest to the work area. Because the wires could be shut down only for that day, Mr. Mechem was eager to complete the work required to be performed under the power lines as quickly as possible.

Of the twelve ironworkers on this job, one was an experienced journeyman and eleven were men of lesser experience who had been given permits by the labor union local to work on the job. On the morning of June 27, petitioner, the business agent of the local, arrived at the construction site with ten journeymen. Petitioner threatened a work stoppage unless five of the men with him were hired. Mr. Mechem acceded to the demand although he believed that the permit men who had been working at the site had done satisfactory work and could adequately perform the job under the high tension wires. In fact, the five men hired at petitioner's insistence worked poorly, causing a foreman to shut down a crane at noon. The foreman reported that the journeymen were not fit for work because they appeared to have drunk heavily before coming to work.

2. The central theory of the defense was that petitioner had demanded the employment of the more experienced journeymen because he was concerned for the safety of his men. Accordingly, he requested a court instruction to the effect that 18 U.S.C. 1951 did not apply to action by a labor union leader honestly representing members

of his union (Pet. 5a-6a). The district court charged the jury that:

> * * * the principal issue before you is the intent with which the defendant threatened to call a work stoppage. The government claims that it was done with the intent and purpose of requiring the Mechem Company to put on and use unwanted and superfluous employees. The defendant claims that is what was done for the purpose of achieving safety in the work operation. As I have already indicated, the burden is upon the government to prove their claim, or theory beyond a reasonable doubt.

Petitioner claims that the court erred in failing to give the instruction in the precise language he requested. But, as the court of appeals properly observed, in its context the instruction as given adequately set forth the theory of each party clearly and concisely. *United States* v. *Green*, 246 F. 2d 155, 160 (C.A. 7), certiorari denied, 355 U.S. 871.[1] The trial judge was not required to use the language urged by petitioner.

3. Petitioner also claims that the factual situation presented does not fall within the scope of the Hobbs Act because the services to be performed by the men

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[1] The court of appeals also concluded that petitioner's requested instruction was incomplete because it did not mention the possibility that ramifications of legitimate labor activity could fall within the proscriptions of the statute. To the extent that the court's discussion could be construed to be at odds with this Court's subsequent ruling in *United States* v. *Enmons*, No. 71-1193, decided on February 22, 1973, that alternative basis for rejecting petitioner's instruction might no longer be acceptable. Nevertheless, since the court of appeals correctly noted that petitioner's requested charge was in essence given in the trial judge's own words, and the instruction as given was proper, further review of the claim addressed to instructional error is not required.

hired at his insistence were necessary rather than superfluous, and the hiring did not entail the use of any additional employees. To the contrary, petitioner's acts of forcing the employer to hire individuals who at the time were knowingly unfit to perform work which could not be delayed, and to substitute them for workers prepared to complete the assigned job in the allotted time, fell within the scope of a statute proscribing the obstruction of commerce "in any way or degree." The additional wages paid to these useless journeymen who evidently worked at a higher pay scale than the permit men they replaced, and who failed to complete their assignment in the limited time available, completed the offense of extortion within the meaning of the Hobbs Act. See *United States* v. *Green,* 350 U.S. 415.

Petitioner's reliance upon *United States* v. *Enmons,* decided by this Court on February 22, 1973 (No. 71-1193), is misplaced. In *Enmons,* the Court, citing favorably its prior ruling in *Green* (slip op., p. 5 n. 5), held that the use of force to achieve legitimate collective bargaining demands was not proscribed by the Hobbs Act. The *Enmons* exception presumes the existence of bona fide employees and a legitimate labor concern. Here the evidence supported by the jury verdict showed that these factors were lacking.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1973.

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